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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SHIKEB SADDOZAI,

Plaintiff,

v.

RON DAVIS, et al.,

Defendants.

Case No. 5:18-cv-05558-BLF (PR)

**DEFENDANT'S NOTICE OF ASSISTED
FILING AND NON-OPPOSITION TO
PLAINTIFF'S REQUEST FOR
EXTENSION OF TIME TO OPPOSE
THE MOTION TO DISMISS**

TO THE COURT AND PLAINTIFF SHIKEB SADDOZAI, PRO SE:

PLEASE TAKE NOTICE that defense counsel received a letter from Plaintiff attached to this filing as **Exhibit A**. In the letter, Plaintiff expressed difficulty opposing Defendant's motion to dismiss and asked defense counsel to forward the letter with attachments to the Court.

Although Plaintiff does not make clear, defense counsel believes the library access restrictions Plaintiff raises may be related to the COVID-19 crisis. For example, effective April 8, 2020, all CDCR adult institutions implemented a 14-day modified program. While movement had been limited throughout institutions already, CDCR implemented these mandatory restrictions statewide for two weeks to further reduce staff and inmate exposure to COVID-19. A

1 copy of this modified-program order is attached to this filing as **Exhibit B**. Update to date
 2 information is available at <https://www.cdcr.ca.gov/covid19/>, and a copy of the information
 3 displayed as of April 17, 2020 is attached to this filing as **Exhibit C** for Plaintiff's benefit.

4 In light of the ongoing COVID-19 crisis, defense counsel does not oppose reasonable
 5 extension of time for Plaintiff to oppose Defendant's motion to dismiss. However, the dismissal
 6 of this matter is a certainty.

7 Plaintiff's third amended complaint makes unequivocally clear that he failed to exhaust his
 8 administrative remedies before filing suit. (ECF No. 29.) He explicitly pleads that he exhausted
 9 after suit was filed. (Compare ECF No. 29 at 2 with ECF No. 1.) In doing so, he failed to satisfy
 10 exhaustion requirements as mandated by the Ninth Circuit. *McKinney v. Carey*, 311 F.3d 1198,
 11 1199 (9th Cir. 2002). The Ninth Circuit requires this action be dismissed without prejudice. *Id.*
 12 ("Congress has made a policy judgment that [the expenditure of additional resources by the
 13 parties and the court in requiring a second suit be filed] is outweighed by the advantages of
 14 requiring exhaustion prior to the filing of suit.").

15 Dated: April 17, 2020

Respectfully submitted,

16 XAVIER BECERRA
 17 Attorney General of California
 18 WILLIAM C. KWONG
 Supervising Deputy Attorney General

19 */s/ Allison M. Low*

20 ALLISON M. LOW
 21 Deputy Attorney General
 Attorneys for Defendant

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CERTIFICATE OF SERVICE

Case Name: S. Saddozai v. Davis, et al.

Case No. 5:18-cv-05558-BLF (PR)

I hereby certify that on April 20, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANT'S NOTICE OF ASSISTED FILING AND NON-OPPOSITION TO
PLAINTIFF'S REQUEST FOR EXTENSION OF TIME TO OPPOSE THE MOTION
TO DISMISS with Exhibits A to C**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On April 20, 2020, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Shikeb Saddozai (AY1590)
California State Prison - Corcoran
P.O. Box 3461
Corcoran, CA 93212
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 20, 2020, at San Francisco, California.

G. Pang
Declarant

/s/ G. Pang
Signature